

**TWENTY SECOND DAY**

House Chamber, Olympia, Tuesday, May 17, 2011

The House was called to order at 1:00 p.m. by the Speaker (Representative Moeller presiding). The Clerk called the roll and a quorum was present.

The flags were escorted to the rostrum by a Sergeant at Arms Color Guard, Pages Pam Kentner and Joe Atkinson. The Speaker (Representative Moeller presiding) called upon Representative Green to preside.

The Speaker (Representative Green presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Representative Mark Miloscia, 30th District, Washington.

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

**MESSAGES FROM THE SENATE**

May 16, 2011

MR. SPEAKER:

The Senate concurred in the House amendment(s) to the following bills and passed the bills as amended by the House:

SECOND ENGROSSED SENATE BILL 5773  
ENGROSSED SUBSTITUTE SENATE BILL 5921  
and the same are herewith transmitted.

Brad Hendrickson, Deputy Secretary

May 17, 2011

MR. SPEAKER:

The President has signed:

SECOND ENGROSSED SENATE BILL 5773  
ENGROSSED SUBSTITUTE SENATE BILL 5921  
and the same are herewith transmitted.

Thomas Hoemann, Secretary

May 17, 2011

MR. SPEAKER:

The Senate has passed:

SECOND ENGROSSED SENATE BILL 5638  
SUBSTITUTE SENATE BILL 5912  
and the same are herewith transmitted.

Brad Hendrickson, Deputy Secretary

May 17, 2011

MR. SPEAKER:

The Senate has passed ENGROSSED HOUSE BILL 1248 and the same is herewith transmitted.

Brad Hendrickson, Deputy Secretary

**INTRODUCTIONS AND FIRST READING**

HB 2117 by Representatives Moeller, Hasegawa, Carlyle, Jinkins, Green, Appleton, Ormsby, Tharinger, Lytton, Billig,

Ryu, Moscoso, Ladenburg, Hunt, McCoy, Roberts and Rolfes

AN ACT Relating to establishing an application process for the nonresident sales tax exemption; amending RCW 82.08.0273; and prescribing penalties.

Referred to Committee on Ways & Means.

HB 2118 by Representatives Goodman, Moeller, Dickerson, Jinkins, Roberts, Appleton, Billig, Lias, Finn, Fitzgibbon, Reykdal, Pedersen, Hasegawa, Carlyle, Green and Rolfes

AN ACT Relating to medical use of cannabis; amending RCW 69.51A.010, 69.51A.030, 69.51A.040, 69.51A.---, 69.51A.050, 69.51A.---, 82.08.0281, and 82.12.0275; and repealing RCW 69.51A.---, 69.51A.---, and 69.51A.---.

Referred to Committee on Health Care & Wellness.

There being no objection, the bills listed on the day's introduction sheet under the fourth order of business were referred to the committees so designated.

**REPORTS OF STANDING COMMITTEES**

January 1, 0001

ESHB 2088

Prime Sponsor, Committee on Ways & Means: Creating the opportunity scholarship board to assist middle-income students and invest in high employer demand programs. Reported by Committee on No committee found

MAJORITY recommendation:

May 17, 2011

ESSB 5581

Prime Sponsor, Committee on Ways & Means: Creating a nursing home safety net assessment. (REVISED FOR ENGROSSED: Concerning nursing homes. ) Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle; Cody; Dickerson; Haler; Hinkle; Hudgins; Hunt; Kagi; Kenney; Ormsby; Springer and Sullivan.

MINORITY recommendation: Do not pass. Signed by Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler; Haigh; Parker; Ross; Schmick; Seaquist and Wilcox.

May 17, 2011  
**SB 5956** Prime Sponsor, Senator Harper: Concerning the prohibited practices of collection agencies. Reported by Committee on Business & Financial Services

MAJORITY recommendation: Do pass. Signed by Representatives Kirby, Chair; Bailey, Ranking Minority Member; Buys, Assistant Ranking Minority Member; Blake; Condotta; Hudgins; Hurst; Parker; Rivers and Stanford.

There being no objection, the bills listed on the day's committee reports under the fifth order of business were placed on the second reading calendar.

## SECOND READING

**HOUSE BILL NO. 2088, by Representatives Probst, Haler, Frockt, Zeiger, Tharinger, Asay, Orwall, Armstrong, Carlyle, Maxwell, Springer, Kenney, Seaquist, Finn, Haigh, Dammeier, Smith, Goodman, Lytton, Stanford, Dahlquist, Ladenburg, Wylie and Rivers**

**Creating the opportunity scholarship board to assist middle-income students and invest in high employer demand programs.**

The bill was read the second time.

There being no objection, Substitute House Bill No. 2088 was substituted for House Bill No. 2088 and the substitute bill was placed on the second reading calendar.

SUBSTITUTE HOUSE BILL NO. 2088 was read the second time.

Representative Haler moved the adoption of amendment (789).

On page 4, line 1, after "programs" insert "in light of established legislative priorities"

On page 4, line 12, after "complete the" insert "eligible"

On page 5, line 14, after "for the" strike "opportunity award program" and insert "state need grant"

On page 10, at the beginning of line 12, insert "each December 1st"

On page 10, line 17, after "education" strike "and training"

On page 10, line 29, after "education" strike "and training"

Representatives Haler and Seaquist spoke in favor of the adoption of the amendment.

Amendment (789) was adopted.

The bill was ordered engrossed.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Probst, Haler, Hasegawa, Klippert and Frockt spoke in favor of the passage of the bill.

## MOTIONS

On motion of Representative Van De Wege, Representatives Pettigrew and Ryu were excused. On motion of Representative

Hinkle, Representatives Johnson, Angel, McCune and Parker were excused.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 2088.

## ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2088, and the bill passed the House by the following vote: Yeas, 84; Nays, 8; Absent, 0; Excused, 6.

Voting yea: Representatives Ahern, Alexander, Appleton, Armstrong, Asay, Bailey, Billig, Blake, Buys, Carlyle, Clibborn, Cody, Crouse, Dahlquist, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Fagan, Finn, Fitzgibbon, Frockt, Goodman, Green, Haigh, Haler, Hargrove, Harris, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jinkins, Kagi, Kelley, Kenney, Kirby, Kretz, Kristiansen, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Nealey, Orcutt, Ormsby, Orwall, Pedersen, Probst, Reykdal, Rivers, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Short, Smith, Springer, Stanford, Sullivan, Takko, Tharinger, Uptegrove, Van De Wege, Walsh, Warnick, Wilcox, Wylie, Zeiger and Mr. Speaker.

Voting nay: Representatives Anderson, Chandler, Condotta, Klippert, Overstreet, Pearson, Shea and Taylor.

Excused: Representatives Angel, Johnson, McCune, Parker, Pettigrew and Ryu.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2088, having received the necessary constitutional majority, was declared passed.

## STATEMENT FOR THE JOURNAL

I intended to vote YEA on Engrossed Substitute House Bill No. 2088.

Representative Pearson, 39th District

## SECOND READING

**ENGROSSED SUBSTITUTE SENATE BILL NO. 5581, by Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Parlette, Hargrove, Shin, Conway and Kline)**

**Creating a nursing home safety net assessment. Revised for 1st Substitute: Creating a nursing home safety net assessment. (REVISED FOR ENGROSSED: Concerning nursing homes. )**

The bill was read the second time.

Representative Kretz moved the adoption of amendment (790).

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** A new section is added to chapter 18.51 RCW to read as follows:

A nursing home that has voluntarily reduced its bed capacity for lesser acuity purposes under RCW 70.38.111(8) may assign qualified staff to perform duties concurrently in both the nursing home units of the facility as well as the units with beds converted to the alternate use. Staffing levels must comply with the department's standards for the highest care need category of patient in each unit.

**Sec. 2.** RCW 74.46.431 and 2010 1st sp.s. c 34 s 3 are each amended to read as follows:

(1) Nursing facility medicaid payment rate allocations shall be facility-specific and shall have seven components: Direct care, therapy care, support services, operations, property, financing allowance, and variable return. The department shall establish and adjust each of these components, as provided in this section and elsewhere in this chapter, for each medicaid nursing facility in this state.

(2) Component rate allocations in therapy care and support services for all facilities shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds, regardless of how many beds are set up or in use. Component rate allocations in operations, property, and financing allowance for essential community providers shall be based upon a minimum facility occupancy of ~~((eighty-five))~~ eighty percent of licensed beds, regardless of how many beds are set up or in use. Component rate allocations in operations, property, and financing allowance for small nonessential community providers shall be based upon a minimum facility occupancy of ninety percent of licensed beds, regardless of how many beds are set up or in use. Component rate allocations in operations, property, and financing allowance for large nonessential community providers shall be based upon a minimum facility occupancy of ninety-two percent of licensed beds, regardless of how many beds are set up or in use. For all facilities, the component rate allocation in direct care shall be based upon actual facility occupancy. The median cost limits used to set component rate allocations shall be based on the applicable minimum occupancy percentage. In determining each facility's therapy care component rate allocation under RCW 74.46.511, the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted therapy costs per adjusted resident day. In determining each facility's support services component rate allocation under RCW 74.46.515(3), the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted support services costs per adjusted resident day. In determining each facility's operations component rate allocation under RCW 74.46.521(3), the department shall apply the minimum facility occupancy adjustment before creating the array of facilities' adjusted general operations costs per adjusted resident day.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the direct care component rate allocation shall be rebased, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2012. Beginning July 1, 2012, the direct care component rate allocation shall be rebased biennially during every even-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2010 is used for July 1, 2012, through June 30, 2014, and so forth.

(b) Direct care component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the direct care component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a

biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the direct care component rate allocation established in accordance with this chapter.

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the therapy care component rate allocation shall be cost rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2012. Beginning July 1, 2012, the therapy care component rate allocation shall be rebased biennially during every even-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2010 is used for July 1, 2012, through June 30, 2014, and so forth.

(b) Therapy care component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the therapy care component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the therapy care component rate allocation established in accordance with this chapter.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the support services component rate allocation shall be cost rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2012. Beginning July 1, 2012, the support services component rate allocation shall be rebased biennially during every even-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2010 is used for July 1, 2012, through June 30, 2014, and so forth.

(b) Support services component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the support services component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the support services component rate allocation established in accordance with this chapter.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Effective July 1, 2009, the operations component rate allocation shall be cost rebased, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2012. Beginning July 1, 2012, the operations care component rate allocation shall be rebased biennially during every even-numbered year thereafter using adjusted cost report data from two years prior to the rebase period, so adjusted cost report data for calendar year 2010 is used for July 1, 2012, through June 30, 2014, and so forth.

(b) Operations component rate allocations established in accordance with this chapter shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial

appropriations act. The economic trends and conditions factor or factors defined in the biennial appropriations act shall not be compounded with the economic trends and conditions factor or factors defined in any other biennial appropriations acts before applying it to the operations component rate allocation established in accordance with this chapter. When no economic trends and conditions factor or factors for either fiscal year are defined in a biennial appropriations act, no economic trends and conditions factor or factors defined in any earlier biennial appropriations act shall be applied solely or compounded to the operations component rate allocation established in accordance with this chapter.

(8) Total payment rates under the nursing facility medicaid payment system shall not exceed facility rates charged to the general public for comparable services.

(9) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in circumstances not directly addressed by this chapter, including but not limited to: Inflation adjustments for partial-period cost report data, newly constructed facilities, existing facilities entering the medicaid program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing medicaid facilities following a change of ownership of the nursing facility business, facilities temporarily reducing the number of set-up beds during a remodel, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

(10) The department shall establish in rule procedures, principles, and conditions, including necessary threshold costs, for adjusting rates to reflect capital improvements or new requirements imposed by the department or the federal government. Any such rate adjustments are subject to the provisions of RCW 74.46.421.

(11) Effective July 1, 2010, there shall be no rate adjustment for facilities with banked beds. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW.

(12) Facilities obtaining a certificate of need or a certificate of need exemption under chapter 70.38 RCW after June 30, 2001, must have a certificate of capital authorization in order for (a) the depreciation resulting from the capitalized addition to be included in calculation of the facility's property component rate allocation; and (b) the net invested funds associated with the capitalized addition to be included in calculation of the facility's financing allowance rate allocation.

**Sec. 3.** RCW 74.46.435 and 2010 1st sp.s. c 34 s 5 are each amended to read as follows:

(1) The property component rate allocation for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation, subject to department rule, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, by the greater of a facility's total resident days in the prior period or resident days as calculated on ~~((eighty five))~~ eighty percent facility occupancy for essential community providers, ninety percent occupancy for small nonessential community providers, or ninety-two percent facility occupancy for large nonessential community providers. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the property component rate shall be adjusted to anticipated resident day level.

(2) A nursing facility's property component rate allocation shall be rebased annually, effective July 1st, in accordance with this section and this chapter.

(3) When a certificate of need for a new facility is requested, the department, in reaching its decision, shall take into consideration per-bed land and building construction costs for the facility which shall not exceed a maximum to be established by the secretary.

(4) The property component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

**Sec. 4.** RCW 74.46.521 and 2010 1st sp.s. c 34 s 16 are each amended to read as follows:

(1) The operations component rate allocation corresponds to the general operation of a nursing facility for one resident for one day, including but not limited to management, administration, utilities, office supplies, accounting and bookkeeping, minor building maintenance, minor equipment repairs and replacements, and other supplies and services, exclusive of direct care, therapy care, support services, property, financing allowance, and variable return.

(2) The department shall determine each medicaid nursing facility's operations component rate allocation using cost report data specified by RCW 74.46.431(7)(a). Operations component rates for essential community providers shall be based upon a minimum occupancy of ~~((eighty five))~~ eighty percent of licensed beds. Operations component rates for small nonessential community providers shall be based upon a minimum occupancy of ninety percent of licensed beds. Operations component rates for large nonessential community providers shall be based upon a minimum occupancy of ninety-two percent of licensed beds.

(3) For all calculations and adjustments in this subsection, the department shall use the greater of the facility's actual occupancy or an imputed occupancy equal to ~~((eighty five))~~ eighty percent for essential community providers, ninety percent for small nonessential community providers, or ninety-two percent for large nonessential community providers. To determine each facility's operations component rate the department shall:

(a) Array facilities' adjusted general operations costs per adjusted resident day, as determined by dividing each facility's total allowable operations cost by its adjusted resident days for the same report period for facilities located within urban counties and for those located within nonurban counties and determine the median adjusted cost for each peer group;

(b) Set each facility's operations component rate at the lower of:

(i) The facility's per resident day adjusted operations costs from the applicable cost report period adjusted if necessary for minimum occupancy; or

(ii) The adjusted median per resident day general operations cost for that facility's peer group, urban counties or nonurban counties; and

(c) Adjust each facility's operations component rate for economic trends and conditions as provided in RCW 74.46.431(7)(b).

(4) The operations component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

**NEW SECTION. Sec. 5.** It is the intent of the legislature to encourage maximization of financial resources eligible and available for nursing home residents by establishing a quality incentive payment system through a temporary nursing home licensing fee surcharge that will ensure better quality nursing facility care for all residents, and which may also be used to secure additional federal matching funds under federally prescribed programs available through the state medicaid plan. The legislature intends to refund any excess fee collections if funding is not sufficient to support the payments provided in this act or if federal financial participation is not received.

**NEW SECTION. Sec. 6.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of social and health services.

(2) "Fund" means the nursing facility quality assurance trust fund created in section 7 of this act.

(3) "Hospital-based" means a nursing facility that is part of, or a related organization of, a hospital. For the purposes of this subsection, "related organization" means an entity which is under

common ownership or control with, or has control of, or is controlled by, the entity that has a contract with the department to provide nursing facility services to medicaid recipients.

(4) "Low medicaid nursing facility" means a nursing facility with less than or equal to one hundred medicaid resident days in fiscal year 2009.

(5) "Medicare patient day" means a patient day for medicare beneficiaries on a medicare part A stay, medicare hospice stay, and a patient day for persons who have opted for managed care coverage using their medicare benefit.

(6) "Nonexempt nursing facility" means a nursing facility that is not exempt from the licensing fee surcharge under section 8 of this act.

(7) "Nursing facility" has the same meaning as "nursing home" in RCW 18.51.010.

(8) "Resident day" means a calendar day of care provided to a nursing facility resident, excluding medicare patient days. Resident days include the day of admission and exclude the day of discharge. An admission and discharge on the same day count as one day of care. Resident days include nursing facility hospice days and exclude bedhold days for all residents.

**NEW SECTION. Sec. 7.** (1) There is hereby established in the state treasury the nursing facility quality assurance trust fund.

(2) The nursing facility quality assurance trust fund must be a separate and continuing fund, and no money in the fund reverts to the state general fund at any time. The legislature may not appropriate funds from the trust fund inconsistent with this section unless approved by an affirmative vote of at least two-thirds of the members of each house of the legislature. The interest and income on the money in the fund, after deducting any applicable charges, must be credited to the fund. Disbursements from the fund must be made in the omnibus appropriations act consistent with this section.

(3) Any money received under section 8 of this act must be deposited in the state treasury for credit to the nursing facility quality assurance trust fund, and must be expended in accordance with this chapter. To the extent authorized by federal law, money in the fund may be used to obtain federal financial participation in the medicaid program to maintain and enhance nursing facility rates in a manner set forth in subsection (6) of this section.

(4) Disbursements from the nursing facility quality assurance trust fund must only be used for the following:

(a) As an immediate pass-through or rate add-on to reimburse the medicaid share of the nursing facility licensing fee surcharge as a medicaid allowable cost;

(b) To make medicaid payments for nursing facility services in an amount sufficient for maintenance and enhancement of the medicaid nursing home rates paid on June 30, 2010; for subsequent enhancement of the medicaid nursing home rate settings; and for funding new standards imposed by the federal government;

(c) For quality incentive payments to a nursing facility developed under section 12 of this act; and

(d) If federal financial participation in the medicaid program is received by the state, to lower or refund the nursing facility licensing fee surcharge.

(5) To administer the provisions of this chapter the department may expend an amount not to exceed one-half of one percent of the money received from the surcharges assessed, and must not exceed the amount authorized for expenditure by the legislature for administrative expenses in a fiscal year.

(6) Any positive balance in the fund at the end of a fiscal year must be refunded to nursing facilities in proportion to the amounts paid by such facilities.

(7) Expenditures from the nursing facility quality assurance trust fund may not be included in the calculation of the annual statewide weighted average nursing facility payment rate for the purposes of implementing the provisions of RCW 74.46.421(4).

**NEW SECTION. Sec. 8.** (1) Annually, at the time of the billing for the licensing fee under RCW 18.51.050, the department must collect from all nonexempt nursing facilities a nursing facility licensing fee surcharge of up to three hundred seventy-five percent of the licensing fee established in RCW 18.51.050 excluding medicare patient days. The department must provide an option for nursing facilities to pay the licensing fee surcharge on a quarterly or monthly basis.

(2) All licensing fee surcharges collected pursuant to this section by the department must be transmitted to the state treasurer who must credit all such amounts to the nursing facility quality assurance trust fund created in section 7 of this act.

(3) In accordance with the redistribution method set forth in 42 C.F.R. Sec. 433.68(e)(1) and (2), the department must seek a waiver of the broad-based and uniform provider assessment requirements of federal law to exclude certain nursing facilities from the licensing fee surcharge. The department shall exempt the following nursing facility providers from the licensing fee surcharge subject to federal approval:

(a) Nursing facilities operated by any agency of the state of Washington;

(b) Nursing facilities operated by a public hospital district or that are hospital-based; and

(c) As many nursing facilities with no or disproportionately low numbers of medicaid-funded residents, as within the judgment of the department, may be exempted from the licensing fee surcharge pursuant to federal law.

(4) To the extent necessary to obtain federal approval, the exemptions prescribed in subsection (3) of this section may be amended by the department.

**NEW SECTION. Sec. 9.** (1) As of the effective date of this section, the department, in cooperation with the office of financial management, may adjust the fee amounts under section 8 of this act as follows:

(a) If sufficient other funds for nursing facilities are available to support the reimbursement rates and other payments under section 7 of this act without utilizing the full surcharge authorized under section 8 of this act, the department must reduce the amount of the fee to the minimum level necessary to support those reimbursement rates and other payments.

(b) Any positive balance remaining in the fund at the end of the fiscal year must be refunded to nursing facilities in proportion to the amounts paid by such facilities.

(c) Any adjustment to the fee amounts pursuant to this subsection, and the data supporting such adjustment, including but not limited to relevant data listed in subsection (2) of this section, must be submitted to the Washington health care association, and aging services of Washington, for review and comment at least sixty calendar days prior to implementation of such adjusted fee amounts. Any review and comment provided by the Washington health care association, and aging services of Washington, may not limit the ability of either association or its members to challenge an adjustment or other action by the department that is not made in accordance with this chapter.

(2) By November 30th of each year, the department must provide the following data to the Washington health care association, and aging services of Washington:

(a) The fund balance; and

(b) The amount of fee surcharges paid by each nursing facility.

**NEW SECTION. Sec. 10.** (1) For fiscal years 2012 and 2013 and subject to appropriation, the department shall do a comparative analysis of the facility-based payment rates calculated on July 1, 2011, using the payment methodology defined in chapter 74.46 RCW, section 1 of this act, and RCW 74.46.431, 74.46.435, and 74.46.521, to the facility-based payment rates in effect June 30, 2010. If the facility-based payment rate calculated on July 1, 2011, is smaller than the facility-based payment rate on June 30, 2011, the

difference shall be provided to the individual nursing facilities as an add-on payment per medicaid resident day.

(2) To the extent that the revenue from the licensing fee surcharge established in section 8 of this act exceeds the revenue needed to pay the supplemental rate defined in subsection (1) of this section, funding shall be allocated to a direct care add-on rate. During the comparative analysis performed in subsection (1) of this section, if it is found that the direct care rate for any facility would be greater at the July 1, 2011, rate than the direct care rate in effect on June 30, 2010, then the facility shall receive a proportionate share of the additional revenue as a rate add-on to compensate that facility for taking on more acute clients than they have in the past. At no time shall the rate add-on defined in this subsection exceed the revenue collected under the facility licensing fee surcharge as defined in section 8 of this act.

(3) The rate add-on provided in subsection (2) of this section is subject to the reconciliation and settlement process provided in RCW 74.46.022(6).

**NEW SECTION. Sec. 11.** (1) The imposition, collection, and disbursement of funds under this chapter become null and void if:

(a) Funding in the omnibus appropriations act does not fully support the rates and quality incentive payments established in this chapter for the upcoming fiscal year;

(b) Federal financial participation in the medicaid program is not received by the state; or

(c) The waiver request under section 8(3) of this act is not approved.

(2) This chapter does not take effect or ceases to be imposed, and any moneys remaining in the fund must be refunded to nursing facilities in proportion to the amounts paid by such facilities, if and to the extent that an appellate court or the centers for medicare and medicaid services makes a final determination that any element of this chapter cannot be validly implemented.

**NEW SECTION. Sec. 12.** (1) The department, the department of health, the Washington state health care association, and aging services of Washington must design a system of nursing facility quality incentive payments. The system must be based upon the following principles:

(a) Evidence-based treatment and processes must be used to improve health care outcomes for all nursing facility residents;

(b) Effective purchasing strategies to improve the quality of health care services should involve the use of common quality improvement measures, while recognizing that some measures may not be appropriate for application to facilities with high bariatric, behaviorally challenged, or rehabilitation populations;

(c) Quality measures chosen for the system should be consistent with the standards that have been developed by national quality improvement organizations, such as the national quality forum, the federal centers for medicare and medicaid services, or the federal agency for healthcare research and quality. New reporting burdens to nursing facilities should be minimized by giving priority to measures that nursing facilities are currently required to report to governmental agencies, such as the nursing home compare measures collected by the federal centers for medicare and medicaid services;

(d) Benchmarks for each quality improvement measure should be set at levels that are feasible for nursing facilities to achieve, yet represent real improvements in quality and performance for a majority of nursing facilities in Washington state; and

(e) Nursing facilities performance and incentive payments should be designed in a manner such that all facilities in Washington are able to receive the incentive payments if performance is at or above the benchmark score set in the system established under this section.

(2) Upon satisfaction of the applicable conditions set forth in section 11 of this act, and for state fiscal year 2013 and each fiscal year thereafter, fees may be used to support an additional three percent increase in nursing facility reimbursement rates for facilities

that meet the quality incentive benchmarks established under this section.

**Sec. 13.** RCW 43.84.092 and 2011 c 339 s 1, 2011 c 311 s 9, 2011 c 272 s 3, 2011 c 120 s 3, and 2011 c 83 s 7 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the high capacity transportation

account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multiagency permitting team account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the nursing facility quality assurance trust fund, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**NEW SECTION. Sec. 14.** Sections 5 through 12 of this act constitute a new chapter in Title 74 RCW."

Correct the title.

Representatives Kretz and Alexander spoke in favor of the adoption of the amendment.

Representative Cody spoke against the adoption of the amendment.

Amendment (790) was not adopted.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Hunter, Armstrong, Hinkle and Hasegawa spoke in favor of the passage of the bill.

Representatives Orcutt and Ross spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 5581.

**ROLL CALL**

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 5581, and the bill passed the House by the following vote: Yeas, 54; Nays, 38; Absent, 0; Excused, 6.

Voting yea: Representatives Appleton, Armstrong, Billig, Blake, Carlyle, Chandler, Clibborn, Cody, Darneille, Dickerson, Dunshee, Eddy, Finn, Fitzgibbon, Frockt, Green, Haler, Hasegawa, Hinkle, Hudgins, Hunt, Hunter, Jinkins, Kagi, Kenney, Kirby, Kretz, Ladenburg, Liias, Lytton, Maxwell, McCoy, Miloscia, Moeller, Morris, Moscoso, Ormsby, Orwall, Pedersen, Reykdal, Roberts, Rolfes, Sells, Short, Springer, Stanford, Sullivan, Takko, Tharinger, Upthegrove, Van De Wege, Walsh, Warnick and Mr. Speaker.

Voting nay: Representatives Ahern, Alexander, Anderson, Asay, Bailey, Buys, Condotta, Crouse, Dahlquist, Dammeier, DeBolt, Fagan, Goodman, Haigh, Hargrove, Harris, Hope, Hurst, Kelley, Klippert, Kristiansen, Nealey, Orcutt, Overstreet, Pearson, Probst, Rivers, Rodne, Ross, Santos, Schmick, Seaquist, Shea, Smith, Taylor, Wilcox, Wylie and Zeiger.

Excused: Representatives Angel, Johnson, McCune, Parker, Pettigrew and Ryu.

ENGROSSED SUBSTITUTE SENATE BILL NO. 5581, having received the necessary constitutional majority, was declared passed.

**THIRD READING**

**MESSAGE FROM THE SENATE**

May 17, 2011

Mr. Speaker:

The Senate refuses to concur in the House amendment to SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 5742 and asks the House for a Conference thereon. The President has appointed the following members as Conferees: Senators Haugen, King and Prentice, and the same is herewith transmitted.

Brad Hendrickson, Deputy Secretary

**SENATE AMENDMENT TO HOUSE BILL**

There being no objection, the House granted the Senate's request for a Conference on SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 5742. The Speaker appointed the following members as Conferees: Representatives Clibborn, Hargrove and Reykdal.

There being no objection, the House advanced to the eleventh order of business.

There being no objection, the House adjourned until 9:55 a.m., May 18, 2011, the 23rd Day of the 1<sup>st</sup> Special Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk

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